

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

**EDWARD J. FIORE**

Serial No.: 09/688,717

Filed: October 16, 2000

For: Arbitrated Loop Port Switching

Attorney Docket No.: 98-046-NSC (STK98046PUS)



Group Art Unit: 2664

Examiner: not known

**DECLARATION BY TIMOTHY R. SCHULTE  
OF FACTS PERTAINING TO A PETITION  
UNDER 37 C.F.R. § 1.47(b)**

Commissioner for Patents  
United States Patent and Trademark Office  
Washington, D.C. 20231

Sir:

This declaration has been prepared to show diligent effort, required under 37 C.F.R. § 1.47(b), in attempting to obtain a signed declaration from Edward J. Fiore, the sole named inventor on the above-mentioned patent application. This declaration was prepared in response to a Notice of Missing Parts mailed December 8, 2000.

The following facts are stated to the best of my recollection:

I am Assistant General Counsel for Storage Technology Corporation (StorageTek). I have held this position as well as the position of Senior Intellectual Property Counsel throughout the time period discussed below.

Edward Fiore agreed "to assign all the Employee's rights, title and interest in and to all Intellectual Property and any applications filed therefor to StorageTek" in a Property Rights Agreement signed May 5, 1996, a copy of which is appended as Exhibit A.

Mr. Fiore left StorageTek to work for NuSpeed, Inc. on December 30, 1999. NuSpeed was subsequently acquired by Cisco Systems, Inc. (Cisco). StorageTek and Cisco have been involved in litigation related to intellectual property and theft of trade secrets by former StorageTek employees since October, 2000.

During the period between when Mr. Fiore signed the above-mentioned property rights agreement and when Mr. Fiore left StorageTek, Mr. Fiore conceived the invention that is the subject of the above-captioned patent application.

I filed the above-captioned patent application with the U.S. Patent and Trademark Office on October 16, 2000. The application was filed at this time to prevent irreparable damage that would have occurred if Cisco began practicing the invention in a product competing with a StorageTek system.

On January 15, 2001, Mr. Fiore sent me an electronic mail citing U.S. Patent Nos. 5,751,715 and 6,118,776. The mail message stated: "This art would make my Patent void." A copy of this electronic mail is appended as Exhibit B. I forwarded this electronic mail to Brooks & Kushman, P.C., on January 15, 2000.

I am authorized to represent StorageTek in intellectual property matters, including signing a Declaration on behalf of StorageTek.

Respectfully submitted,



Timothy R. Schulte  
Assistant General Counsel  
Reg. No. 29,013

Date: April 27, 2001

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